IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

REVIEW PETITION NO. 3080 OF 2005

IN

WRIT PETITION NO. 1378 OF 2004

Smt. Rajesh Devi, W/o late Sri Janeshwar Giri,
R/o House No. T-2/3 Barfkhana Colony,
Mohalla Sot, Roorkee, District Haridwar. .....Petitioner.

Versus

1. Sate of U.P. through Secretary Irrigation Department U.P.
2. Engineer in Chief Irrigation Department U.P.
3. Chief Engineer, Madhya Ganga Priyojna Aligarh, U.P.
4. Assistant Engineer, Upper Ganga Modernization Division-I, Roorkee, Haridwar.
5. Executive Engineer Upper Ganga Modernization Division-IV, Roorkee, Haridwar. ....Respondents.

Dated: 01.09.2005

Sri M.C. Pant, learned counsel for the petitioner.
Mrs. Beena Pandey, learned counsel for the respondents.

Hon'ble Rajesh Tandon, J.

By the present application, the petitioner has prayed for recalling of the order dated 4th May, 2005.

Briefly stated, the petitioner has filed the writ petition directing the respondent to consider the case of the petitioner for appointment on the compassionate ground under the Dying in Harness Rules.

The father of the petitioner was initially appointed as a daily-wager and after completing more than 7 years of service,

he was given appointment in work charge establishment. The husband of the petitioner died on 1st July, 2003 and the petitioner moved the application on 21.10.2003 and 06.12.2003 for providing employment to her under Dying in Harness Rules.

The writ petition was filed on 30th November, 2004.

Smt. Beena Pandey accepted the notice on behalf of the respondents and sought time of three weeks to file a counter affidavit but no counter affidavit was filed. When the petition came up for hearing on 4th May, 2005, she has argued the matter and prayed for a direction for consideration of the representation of the petitioner.

However, after hearing both the parties, a direction was given for consideration of the appointment in accordance with the rules.

In reply to the review petition, counsel for the petitioner has filed the order dated 1st June, 2005 directing the petitioner to take charge. Another letter dated 8th August, 2005 has been filed by which a show cause notice was issued as to why the appointment of the petitioner vide appointment letter dated 1st June, 2005 may not be cancelled.

Learned counsel for the petitioner has also referred the judgment of N.K. Sharma Vs. Presiding Officer, Labour Court, Shimla and thers, [(1996) 3 UPLBEC 2114, where the Apex Court been held as under:-

"The High Court, therefore, has rightly pointed out that through the appellant is entitled to count his service rendered as workcharged employee for the purpose of seniority and promotion, as far as the grade seniority is concerned"

In view of the aforesaid facts and circumstances, the review petition has already become infructuous in as much as the appointment having been given to the petitioner and

thereafter the notice having been issued for its cancellation. It raises a separate cause of action. Further when a direction has been made by this court for consideration, it was open for the respondent to have passed an order appointing or not in accordance with the rules applicable to them.

In view of the aforesaid facts and circumstances, the review petition having become infructuous, is dismissed. However liberty is given to the respondents to consider the notice and its reply in accordance with law.

(Rajesh Tandon, J.)

01.09.2005
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HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1378 of 2004 (SS)

Smt. Rajesh Devi ..... Petitioner

Versus

1. State of U.P.
2. Engineer in Chief Irrigation Department U.P.
3. Chief Engineer, Madhya Ganga Project U.P.
4. Assistant Engineer, Upper Ganga Modernization Division-1, Roorkee
5. Executive Engineer, Upper Ganga Modernization Division –IV, Roorkee. ..... Respondents

Sri M. C. Pant, Advocate for the petitioner

Mrs. Beena Pandey, Advocate for the respondents.

Dated: 4th May 2005

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

Present writ petition has been filed for the grant of a writ of mandamus directing the respondents to consider the case of the petitioner for appointment on a suitable post on compassionate ground under the Dying in Harness Rules.

Briefly stated the husband of the petitioner Late Janeshwar Giri was initially appointed as daily wager and after completing more than 7 years of service he was given appointment in work charge establishment in the pay scale of 750-940 in the office of Executive Engineer, Upper Ganga Canal Modernization Division –IV Roorkee, District Haridwar. The husband of the petitioner died on 1.7.2003 during his

employment. The petitioner moved application on 21.10.2003 and 6.12.2003 for providing employment to her under Dying in Harness Rules.

The petitioner has submitted that Special Secretary Govt. of U.P. sent a letter on 26.9.1990 to the Chief Engineer, Irrigation Department U.P. Lucknow stating therein that there is no ban for giving appointment under Dying in harness rules. Further on 16.9.2002 the Special Secretary U.P. Govt. sent a letter to the Chief Engineer, Irrigation Department U.P. Lucknow stating therein that G.O. dated 26.9.1990 is unaffected due to the subsequent G.O. No. A-102/10-95-24/14/95 dated 1.6.1995. The grievance of the petitioner is that despite of her representation suitable employment has not been provided and her family is suffering due to the sudden death of the bread earner in the family.

The petitioner has placed reliance on the Apex Court's judgment in the case of Smt. Shushma Gosai and others vs. Union of India and others, 1989 (4) SCC, 468. The Apex Court has held as under:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

So far as the work-charge employees are concerned it has been held in the case of Santosh Kumar Mishra vs. State of U.P. & others (2002) 1 UPLBEC 3371 that the deceased employee continuously in employment since 13 years is entitled to all benefits available to regular employees. The dependant of deceased employee is entitled to be considered under Dying in Harness Rules.

In view of above, the respondents are directed to consider the dependants of the deceased work-charge employee for appointment on compassionate ground.

Consequently, the writ petition is allowed. The respondents are directed to consider the appointment of the petitioner on compassionate ground under Dying in Harness Rules. Within one month after filing of the certified copy of this order. There will be no order as to costs.

(Rajesh Tandon J.)

4.5.2005
*Dhyani